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No. 93-263

In The

Supreme Court of the United States

October Term, 1993

MATT T. KOKKONEN,

Petitioner,

vs.

GUARDIAN LIFE INSURANCE COMPANY OF AMERICA; GUARDIAN INSURANCE AND ANNUITY CORPORATION; and GUARDIAN INVESTOR SERVICES CORPORATION,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF ON THE MERITS OF PETITIONER

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63 pp

I.
QUESTION PRESENTED

Does a federal district court have inherent subject matter jurisdiction to hear post-dismissal motions to enforce settlement agreements in actions that are no longer otherwise subject to its jurisdiction?; or more specifically, does a federal district court have subject matter jurisdiction to enforce a settlement agreement entered into between the parties when: 1) the case is no longer pending before the court at the time the court issued the order, having been dismissed with prejudice prior to the application for enforcement of the settlement agreement, 2) the settlement agreement has never been incorporated into an order or judgment of the court disposing of the action, 3) the court has not expressly retained jurisdiction over the action, and 4) no other independent grounds for federal court jurisdiction to enforce the agreement exist?

II.

PARTIES TO THE PROCEEDINGS

In addition to the Petitioner and Respondents named in the caption above, Jean Kokkonen, Petitioner's wife, was a Plaintiff in the original state court complaint but was later dismissed as a party prior to dismissal of the removed action. Petitioner conducts and does business as The Matt Kokkonen Insurance Agency, a sole proprietorship. Pursuant to Rule 29.1 of the Supreme Court Rules, this brief is not filed by or on behalf of any corporation and Petitioner is not a parent or subsidiary of any corporation nor does he own, control or manage such a corporation, parent or subsidiary.

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For The Ninth Circuit

BRIEF ON THE MERITS OF PETITIONER

V.

JUDGMENTS BELOW

The judgment and opinion in the matter of *Kokkonen v. The Guardian Life Insurance Company of America*, Docket No. 92-16628, was entered by the United States Court of Appeals for the Ninth Circuit on May 18, 1993, and is unreported, having been designated "not for publication." A copy of the judgment and opinion is attached to the Petition for Writ of Certiorari filed by Petitioner at App. A-1 and is included in the Joint Appendix at page

JA 264.[1] The opinion and order of the United States District Court in Case No. CV-F-90-00325-REC, dated August 19, 1992 and entered on August 20, 1992, which was affirmed by the above, is unreported. (JA 175)

VI.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1). The order of the Ninth Circuit for which review is sought was entered on May 18, 1993. No petition for rehearing was sought in the Ninth Circuit, and no extension of time within which to file a petition for writ of certiorari was sought.

The District Court had subject matter jurisdiction over Petitioner's complaint and Respondents' counterclaim pursuant to 28 U.S.C. §§ 1441(a) and 1332(a)(1), the action having been removed by Respondents on the basis of diversity jurisdiction from the California Superior Court for the County of Tulare where it had been filed by Petitioner. Petitioner contends that such jurisdiction terminated upon the unconditional dismissal of the complaint and counterclaim on April 13, 1992. Therefore, the lower court's subsequent order dated August 19, 1992, enforcing the settlement agreement, was in excess of the court's jurisdiction. It is this question that Petitioner appealed to the Ninth Circuit and upon which this Court

[1] The appendix attached to the petition shall be referred to herein as "App." and the Joint Appendix shall be referred to herein as "JA".

granted Petitioner's petition for review on writ of certiorari.

VII.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Article III, Sections 1 and 2.

> Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during such good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.
>
> Section 2. The judicial Power shall extend to all Cases, in Law and in Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; – to all Cases affecting Ambassadors, other public Ministers and Consuls; – to all Cases of admiralty and maritime Jurisdiction; – to Controversies to which the United States shall be a Party; – to Controversies between two or more States; – between a State and Citizens of another State; – between Citizens of different States; – between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

VIII.

STATEMENT OF THE CASE

The Court has granted the Petition of Petitioner Matt T. Kokkonen ("Kokkonen") for review by writ of certiorari of an order of the Ninth Circuit Court of Appeals entered on May 18, 1993 (App. A-1 and JA 264) affirming the order of the court below, which granted the post-dismissal motion of Guardian Life Insurance Company of America ("Guardian") for enforcement of a settlement agreement.

In April 1990, Kokkonen filed a civil complaint in the California Superior Court for the County of Tulare against Guardian and other Guardian companies, for whom he had been a general agent and agent for approximately fourteen years, alleging various state-law claims arising out of the termination of his agency agreements and his employment relationship with Guardian.[2] (JA 21-57) Guardian removed the action to federal district court on the grounds of diversity jurisdiction, under 28 U.S.C. §§ 1332 and 1441, and counterclaimed against Kokkonen.[3] (JA 3-21; 68-75) The action proceeded to trial on the merits in the United States District Court for the Eastern District of California.

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[2] The complaint, as amended, stated causes of action for wrongful termination, breach of fiduciary duty, interference with prospective business advantage, fraud, breach of lease, wrongful denial of lease, and prayed for damages, including exemplary damages. (JA 21-57)

[3] Guardian counterclaimed upon theories of conversion and unfair competition, both under state law. (JA 68-75)

Near the conclusion of the trial, but before the jury was instructed, Kokkonen and Guardian (the only parties remaining in the action at that time)[4] reached a settlement of their respective claims and counterclaims. They summarized their oral agreement regarding the terms of the settlement on the record in chambers[5] (JA 76-88), and then filed a stipulation and order of dismissal pursuant to F.R.C.P. Rule 41(a)(1)(ii) mutually dismissing with prejudice their respective actions. (JA 89-91)

The oral settlement agreement between the parties was never reduced to writing, at the insistence of Guardian (JA 118), nor was it ever incorporated into an order or judgment of the court. In fact, the oral settlement agreement was never referred to in the stipulation or the order of dismissal. (JA 89-91) The district court made no pretense to retain jurisdiction of the action and dismissed the case with prejudice by entering the Stipulation and Order of Dismissal With Prejudice on April 13, 1992.[6] (JA 89-91)

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[4] Co-plaintiff Jean Kokkonen, Petitioner's wife, and co-defendants and Guardian subsidiaries Guardian Insurance and Annuity Corporation and Guardian Investor Services Corporation were dismissed as parties to the litigation prior to commencement of trial. The latter Guardian entities were named inadvertently in the appeal to the Ninth Circuit, as acknowledged by Kokkonen in his reply brief filed with that court. (JA 237)

[5] Other than the payment of nominal compensation and the return of certain unspecified "files", other terms of the settlement, for example terms proscribing the nature and character of certain communications between the parties, would run in perpetuity, or at least as long as Kokkonen and Guardian each remained in the insurance business.

[6] *See American Cyanamid Co. v. McGhee*, 317 F.2d 295, 297 (5th Cir. 1963) (under F.R.C.P. Rule 41(a)(1)(i), the dismissal

After entry of the dismissal, the parties disagreed on and disputed the terms of their settlement.[7] On June 29, 1992, Guardian brought a motion before the district court to enforce the settlement agreement and seek sanctions, alleging that Kokkonen had failed to comply with certain terms of the settlement agreement.[8] (JA 92-130) Kokkonen argued in response and on appeal, *inter alia*[9], that the

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itself operates to close the action and may not be conditioned by the court). *See Smith v. Phillips*, 881 F.2d 902, 904 (10th Cir. 1989) ("A voluntary dismissal by stipulation is of right, cannot be conditioned by the court, and does not call for the exercise of any discretion on the part of the court."). *See also Gardiner v. A. H. Robins Co.*, 747 F.2d 1180, 1187-1188 (8th Cir. 1984).

[7] The terms of the settlement agreement were, at best, vague and nebulous, for example calling for the return of "files" without ever clarifying to which specific files either party was referring. It soon became apparent that there had not been a meeting of the minds as to which files were to revert to Guardian under the settlement.

[8] Specifically, Guardian claimed Kokkonen had breached the oral settlement agreement in two respects, first that he had failed to return certain files and second, that he had communicated to Guardian on behalf of a client and Guardian policyholder. (JA 95-100)

[9] Kokkonen contended that he had fully complied with the settlement and disagreed with Guardian concerning the terms of the settlement, in particular arguing that nothing in the settlement required him to turn over his personal "agent" client files or prohibited him from servicing his clients by forwarding certain insurance forms and claims to Guardian on behalf of his clients who were Guardian policyholders and insureds. He also argued that because of the disputed terms of the settlement, an evidentiary or plenary hearing was required as a matter of law, and that the settlement agreement was fatally uncertain. (JA 131-148)

district court lacked subject matter jurisdiction to enforce the settlement agreement because the case was no longer pending before the court, the agreement was not incorporated into an order or judgment of the court, the court had not retained jurisdiction over the action to hear enforcement disputes and the parties had not asked the court to do so, and the court had no independent basis for its exercise of federal jurisdiction.[10] The district court, however, ruled that under *Wilkinson v. Federal Bureau of Investigation*, 922 F.2d 555 (9th Cir. 1991) it had the "inherent power" (JA 180) to summarily enforce the settlement agreement and entered an order ordering Kokkonen to fully comply with certain terms of the agreement and to pay Guardian its fees and costs for filing the motion. (JA 175)

From this Order Enforcing Settlement Agreement, dated August 19, 1992, Kokkonen appealed to the Ninth Circuit on the sole issue of whether the district court had subject matter jurisdiction to issue the Order Enforcing Settlement Agreement. The Ninth Circuit, finding its holding in *Wilkinson* "dispositive" (JA 266) and that pursuant to "its inherent supervisory power" (JA 267) the

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[10] No federal question existed in either the original action or the enforcement motion upon which federal question jurisdiction could be founded. Diversity between Guardian and Kokkonen persisted but, unlike the case in chief, the enforcement motion involved far less than the jurisdictional amount in controversy necessary to sustain diversity jurisdiction. No motion pursuant to F.R.C.P. Rule 60(b)(6) was made although Guardian concedes that it "certainly could have moved for vacation of the Stipulation and Order of Dismissal under Rule 60(b)(6)". (JA 230)

district court had properly "assumed jurisdiction" (JA 267) to decide Guardian's post-dismissal motion to enforce a settlement agreement, affirmed the order of the district court. (JA 264)

IX.

SUMMARY OF ARGUMENT

The post-dismissal exercise by federal district courts of "inherent" or "supervisory" power to enforce settlements where they no longer have an independent basis of subject matter jurisdiction is inconsistent with the basic jurisdictional limitations of Article III of the Constitution. A grant to courts of such continuing residual power derived only from once having had jurisdiction of the action is a far cry from traditional applications of inherent or implied power which have generally dealt with administration of the judicial process and even then only with restraint and discretion.

In the course of the last fifteen years, most circuit courts have addressed this issue. A majority position has emerged that the exercise of inherent power *presupposes* the existence of subject matter jurisdiction and that a district court in hearing post-dismissal motions to enforce settlement agreements lacks power to act when 1) the case is no longer pending before the court at the time the court issues the order; 2) the settlement agreement has not been incorporated into an order or judgment of the court; 3) the court has not expressly retained jurisdiction over the action; and 4) no other independent grounds for federal jurisdiction to enforce the settlement exist.

Where, as here, the district court had unconditionally dismissed the action and had not retained jurisdiction, it is without jurisdiction to enforce the settlement. In such case, absent some other negotiated dispute resolution term in the settlement agreement, the aggrieved party may seek to vacate the dismissal pursuant to F.R.C.P. Rule 60(b)(6) ("Rule 60(b)(6)") or commence an action for breach of contract, damages, and/or specific performance.

Adoption by the Court of a "bright line" rule will halt the inexorable erosion of the fundamental subject matter jurisdiction limitations contained in Article III of the Constitution. Aside from its Constitutional implications, such a rule will serve important policy objectives, including respect for comity in federal-state relations; effective allocation and use of judicial resources; restoration of existing enforcement choices, including Rule 60(b)(6) and private actions, to their proper function; encouragement of dispute resolution planning in settlement negotiations; and promotion of the policy favoring settlement of litigation.

Specifically, Petitioner proposes that absent conventional subject matter jurisdiction, district courts would have *no* jurisdiction to act on post-dismissal enforcement matters unless jurisdiction had been expressly reserved and retained in the Rule 41 dismissal or other formal order or decree; absent such express retention, a dismissal under Rule 41 would operate to finally and conclusively terminate the court's jurisdiction (except to hear a Rule 60(b)(6) motion).

The Court should reverse and remand with directions to vacate the order enforcing settlement.

X.

ARGUMENT

A. Federal Courts are Courts of Limited Jurisdiction.

Unlike state courts, federal courts are courts of limited jurisdiction, not general jurisdiction.[11] *Turner v. Bank of N. Am.*, 4 Dall. 8, 11, 1 L. Ed. 718 (1799); *see also Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 541, 106 S. Ct. 1326, 89 L. Ed. 2d 501 (1986). As courts of limited jurisdiction, federal courts may only hear actions in which they have subject matter jurisdiction. Article III, section 2 of the United States Constitution defines those situations in which federal courts have subject matter

[11] This distinction, so critical to federal subject matter jurisdiction, was overlooked by the key case propounding the concept of inherent supervisory jurisdiction, *Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368 (6th Cir.), *cert. denied*, 429 U.S. 862, 97 S. Ct. 65, 50 L. Ed. 2d 140 (1976), which relied upon a state court case for its decision that the district court had jurisdiction over post-dismissal enforcement actions because of its "inherent power" to enforce a settlement agreement. This flaw was picked up by the Court of Appeals for the Fourth Circuit in *Fairfax Countywide Citizens Ass'n v. County of Fairfax*, 571 F.2d 1299, 1304 (4th Cir.), *cert. denied*, 435 U.S. 1047, 99 S. Ct. 722, 58 L. Ed. 2d 706 (1978), which rejected the *Aro* holding. *See also* Note, *Post-Dismissal Enforcement of Settlement Agreements in Federal Court and the Problem of Subject Matter Jurisdiction*, 9 Rev. Litig. 249, 258 (1990).

jurisdiction and Congress has enacted statutes empowering the federal courts with subject matter jurisdiction in certain specific instances. *See, e.g.*, 28 U.S.C. §§ 1331 (federal question), 1332 (diversity of citizenship), and 1346 (United States as a party).

Because district courts are courts of limited jurisdiction, the presumption is that a district court does *not* have jurisdiction over an action until the contrary is shown. *Turner*, 4 Dall. at 10; *see also Fairfax Countywide Citizens Ass'n v. Fairfax County*, 571 F.2d 1299 (4th Cir.), *cert. denied* 439 U.S. 1047, 99 S. Ct. 722, 58 L. Ed. 2d 706 (1978). Therefore, the burden of proof to establish the federal court's jurisdiction rests on the party asserting that the federal court has jurisdiction. *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 182-183, 56 S. Ct. 780, 80 L. Ed. 1135 (1936); *Fairfax*, 571 F.2d at 1303.

In this action, Guardian wishes this Court to declare that, despite the constraints placed on the jurisdiction of federal courts by the Constitution, district courts have inherent supervisory power to enforce settlement agreements in any action that had once been pending before the court, despite the absence of any subject matter jurisdiction over the post-dismissal motion.

Although the concept of inherent powers of district courts is not new, its application has been very restricted, generally limited to situations which involve the administration of justice and the judicial process.[12] The use of the

[12] *See, e.g., Roadway Express, Inc. v. Piper*, 447 U.S. 752, 100 S. Ct. 2455, 65 L. Ed. 2d 488 (1980) (federal courts have the inherent power to assess attorneys fees against counsel who willfully

inherent power doctrine by district courts to expand the scope of federal judicial power to disputes over which they no longer have subject matter jurisdiction is, Petitioner submits, a significant departure from past practice. Once you conclude that judges have all this residual power, you have seriously eroded the basic subject matter jurisdiction limitations that are present in Article III of the Constitution.[13] The Court should approach with great caution the subject of expanding the inherent powers of district courts to include matters beyond the scope of their traditional and Constitutionally-anchored subject

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abuse the judicial process; inherent powers of federal courts are those which are necessary to the exercise of all others, such as the contempt sanction, and must be exercised with restraint and discretion); and *Ex parte Robinson*, 19 Wall. 505, 510, 22 L. Ed. 205 (1874) (power to punish for contempt is inherent in all courts because it involved disobedience to the orders of the judiciary). *See also* Solimine, *Enforcement and Interpretation of Settlements of Federal Civil Rights Actions*, 19 Rutgers L. J. 295, 315, n.99 (1988).

[13] The incremental and self-perpetuating nature of inherent jurisdiction – each extension of power warrants and justifies further extension – is a serious concern once the district courts are released from traditional constraints of Article III limits. This concern recently prompted one Constitutional law scholar and professor at University of California, Davis School of Law to ponder about the present case " . . . [W]here does it stop? There would no longer be any need for traditional rulemaking. Judges would just become roving dispute tribunals, and that's when they would get into trouble. There would not be the limits on their power that the Constitution had envisioned." Professor Rex Perschbacher, quoted in *San Francisco Daily Journal*, v. 99, no. 202, October 19, 1993, at page 6.

matter jurisdiction as established in the court's precedents. *Accord*, Note, *Post-Dismissal Enforcement of Settlement Agreements in Federal Court and the Problem of Subject Matter Jurisdiction*, 9 Rev. Litig. 249, 258 (1990) ("inherent power theory of jurisdiction lacks legitimacy"); Solimine, *Enforcement and Interpretation of Settlements of Federal Civil Rights Actions*, 19 Rutgers L. J. 295, 316 ("courts exercising 'inherent power' over settlement disputes have not justified the use of that power convincingly").

B. The District Court Had No Jurisdiction to Enforce the Settlement Agreement Because It Had Unconditionally Dismissed the Action Without Any Retention of Jurisdiction.

In this case, it is undisputed that the parties' oral settlement agreement, which they discussed on the record in chambers, was never reduced to writing, was not incorporated into an order or judgment of the court, nor signed or ordered by the court. (JA 77-87; 89-91) The parties filed a stipulation voluntarily dismissing their respective actions with prejudice, pursuant to F.R.C.P. Rule 41(a)(1)(ii), which did not even refer to the settlement agreement.[14] (JA 89-91) The case was then unconditionally dismissed with prejudice, with no mention by the

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[14] *See* fn. 6, *supra*. *See also McCall-Bey v. Franzen*, 777 F.2d 1178, 1185 (7th Cir. 1985) (F.R.C.P. Rule 41(a)(1)(ii) requires that the stipulation providing for the voluntary dismissal of action be filed in court and the dismissal takes effect the date of the filing); *accord*, *Smith v. Phillips*, 881 F.2d 902, 904 (10th Cir. 1989).

court that it was taking any action to retain jurisdiction over the action.[15] (JA 89-91)

After this unconditional dismissal, the parties disputed the terms of the settlement agreement and Guardian sought to enforce the settlement agreement in the district court, claiming Kokkonen had breached certain terms of the agreement. (JA 89-91; 92-94; 95-130)

C. A Conflict Exists Among the Circuit Courts of Appeals Regarding Whether District Courts have Inherent Supervisory Power to Hear All Post-Dismissal Actions to Enforce Settlement Agreements or Whether Proper Subject Matter Jurisdiction Need be Present before a District Court May Hear a Post-Dismissal Motion.

The question before the Court on this writ of certiorari, over which the circuit courts of appeals are

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[15] Consequently "[t]he order of dismissal does not provide a basis for inferring a reservation of jurisdiction in order to resolve potential disputes. The fact that the order of dismissal was 'with prejudice' militates against inferring a retention of jurisdiction and strongly suggests that the district court dismissed the case outright, thereby relinquishing jurisdiction." *U.S. v. Swor*, 139 F.R.D. 100, 102 (E.D. Mich. 1991). Thus, even if the district court assumed that it would have ongoing jurisdiction over the action, it was incorrect because it had done nothing to affirmatively retain jurisdiction. The district court lost jurisdiction over the action by entering the dismissal of the action unconditionally, without taking any steps to retain jurisdiction. Once the district court lost jurisdiction over this matter, it could not regain jurisdiction, except by vacating its dismissal under a Rule 60(b) motion. *McCall*, 777 F.2d at 1190; *Harman v. Pauley*, 678 F.2d 479, 481 (4th Cir. 1982).

divided, is: Does a district court have inherent jurisdiction to enforce a settlement agreement in post-dismissal actions, or must the court still have some grounds for federal jurisdiction before it can enforce the settlement agreement?

Kokkonen argues, as now do the majority of the circuit courts of appeals, that because federal courts are courts of limited jurisdiction, a federal court still must have some basis for subject matter jurisdiction over the action before it can enforce the settlement agreement in a post-dismissal motion. *See Fairfax*, 571 F.2d 1299; *McCall*, 777 F.2d 1178; *Sawka v. Healtheast, Inc.*, 989 F.2d 138 (3d Cir. 1993).

Some circuit courts, however, have stated that district courts can always enforce settlement agreements even without any retention of jurisdiction because they have the "inherent supervisory power" to enforce a settlement agreement which terminated litigation which had once been pending before the court. *See Wilkinson*, 922 F.2d 555; *Joy Mfg. Co. v. National Mine Service*, 810 F.2d 1127 (Fed. Cir. 1987). These courts rely strongly on the argument that because settlement is a valued goal, district courts can always enforce settlement agreements under their "inherent supervisory power" to promote the policy of settlement even in the absence of any federal jurisdictional grounds. *See, e.g., Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368 (6th Cir.), *cert. denied*, 429 U.S. 862, 97 S. Ct. 165, 50 L. Ed. 2d 140 (1976); and *U.S. v. Baus*, 834 F.2d 1114 (1st Cir. 1987).

Although Kokkonen does not dispute that a policy favoring settlement of actions is a good and noble one,

the policy of promoting settlements is not among the enunciated reasons for a federal court to have subject matter jurisdiction over an action.[16] "[A] balance must be struck between this policy and the finality of court orders. Federal courts are courts of limited jurisdiction, which do not have the power to entertain disputes beyond the parameters which Congress has defined. *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 98, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984)." *Langella v. Anderson*, 734 F. Supp. 185, 192 (D.N.J. 1990). Therefore, before a district court can enforce a settlement agreement, it must have some legitimate basis for exercising its jurisdiction, such as the matter is still pending before the court and thus subject to the federal court's jurisdiction, or the matter is no longer pending, but the district court has jurisdiction over the post-dismissal enforcement motion because: 1) the district court expressly retained jurisdiction over the action after it dismissed it (*see Hobbs & Co. v. American Investors Management, Inc.*, 576 F.2d 29, 30-31 (3d Cir. 1978) (settlement approved by district court specifically provided that court retained enforcement jurisdiction)); 2) the settlement agreement was incorporated into an order of the court (*see Halderman v. Pennhurst State School & Hosp.*, 901 F.2d 311 (3d Cir.), *cert. denied*, 498 U.S. 850, 111 S. Ct. 140, 112 L. Ed. 2d 107 (1990)); or 3) an independent basis for jurisdiction exists, such as a federal question (*see United States v. District of Columbia*, 768 F. Supp. 365, 368 (D.C. 1991) (jurisdiction

[16] Kokkonen contends that the exercise of inherent jurisdiction in fact disfavors and interferes with the public policy goals of encouraging settlement of disputes. See discussion, *infra*, at pp. 41-42.

over motion to enforce settlement because, among other grounds, claim arose under "the Constitution, laws or treaties of the United States")).

Although a majority position has emerged among the circuits, the extent of continuing conflict between circuits is testament to the inconsistency and unpredictability that now mark this entire area of post-dismissal enforcement of settlements and to the need for a "bright line" rule that will guide district courts in the future. The varied rationales and approaches to the problem adopted by the different circuits are instructive and can help inform the Court as it seeks to fashion and adopt a workable decisional rule.

1. The State of the Law in the Court of Appeals for the Ninth Circuit.

It is well-settled in the Ninth Circuit Court of Appeals ("Ninth Circuit"), as in other circuit courts of appeals, that a district court has the "inherent power summarily to enforce a settlement agreement with respect to an action *pending before it.*" *In the Matter of Springpark Associates*, 623 F.2d 1377, 1380 (9th Cir.), *cert. denied*, 449 U.S. 956, 101 S. Ct. 364, 66 L. Ed. 2d 221 (1980) (quoting *Dacanay v. Mendoza*, 573 F.2d 1075, 1078 (9th Cir. 1978)) (emphasis added). *Accord In Re Suchy*, 786 F.2d 900, 902-903 (9th Cir. 1985); *Eitel v. McCool*, 782 F.2d 1470, 1473, n.4 (9th Cir. 1986); and *Waits v. Weller*, 653 F.2d 1288, 1291, n.4 (9th Cir. 1981).

Prior to its decision on writ of certiorari before the Court, the Ninth Circuit had never addressed the exact issue present before the Court. In its prior decisions, the

Ninth Circuit did not need to reach this issue because: 1) it found that the action was pending before the court, thus the court had jurisdiction (*see, e.g., Dacanay*, 573 F.2d at 1078); 2) it found some other basis for jurisdiction, such as a retention of jurisdiction over the action or the incorporation of the settlement agreement into an order or judgment of the court (*see, e.g., Springpark*, 627 F.2d at 1380 (terms of settlement agreement were set forth in stipulation, which was incorporated into an order of the court)); or 3) it could decide the action on other grounds (*see, e.g., McClendon v. U.S.*, 885 F.2d 627, 632-633 (9th Cir. 1989) (court did not need to decide if district court has inherent jurisdiction to enforce terms of settlement agreement on sole basis that settlement agreement which terminated litigation was originally before the court, as the case could be decided on grounds of sovereign immunity)).

The Ninth Circuit then decided *Wilkinson*. Its decision in *Wilkinson* seemed in accordance with prior Ninth Circuit law, despite its conclusory language regarding the court's inherent jurisdiction to enforce settlement agreements, because federal jurisdiction could be found from the district court's express retention of jurisdiction over the action to resolve disputes relating to the settlement agreement and its approval of the parties' settlement agreement. *Wilkinson*, 922 F.2d at 557, 559.[17]

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[17] In *Wilkinson*, the parties entered into several stipulations which collectively comprised their settlement agreement. The parties agreed that in exchange for plaintiffs' release of all claims against defendants, defendants would produce thousands of pages of documents to plaintiffs. The settlement agreement also provided for the district court to "hear and resolve" disputes as to the adequacy of defendants' compliance and to review defendants' claims of privilege. *Wilkinson*, 922 F.2d at 557, 559. The district court approved the settlement agreement, entered final judgment in accordance with the stipulations and dismissed the case. Plaintiffs later moved to compel further production of documents, which the Ninth Circuit characterized as a motion to enforce the settlement agreement.

Although it is clear that the district court in *Wilkinson* expressly retained jurisdiction to enforce the settlement agreement by agreeing to review the defendants' production of documents and to "hear and resolve" disputes over the production, *Wilkinson*, 922 F.2d at 559, the Ninth Circuit stated in *Wilkinson* that "[d]istrict courts have the inherent power to enforce settlement agreements," citing *In Re Suchy* and *Springpark* as support for this proposition. *Wilkinson*, 922 F.2d at 557. Yet *In Re Suchy* and *Springpark* only held that courts have such power in actions *pending before them*. *See In Re Suchy*, 786 F.2d at 901-903; *Springpark*, 623 F.2d at 1380. Thus, the Ninth Circuit's holding in *Wilkinson* did not appear inconsistent with its prior holdings.

However, when the Ninth Circuit addressed the issue of post-dismissal jurisdiction over enforcement actions in *Kokkonen v. Guardian*, it seized upon this language in *Wilkinson* to hold that a federal district court has jurisdiction to decide a post-dismissal settlement enforcement motion under its "inherent supervisory power," without the need for any other federal jurisdictional grounds. Specifically, the Ninth Circuit held in its unpublished memorandum in *Kokkonen v. Guardian*: "Despite Kokkonen's arguments to the contrary, our holding in *Wilkinson* is dispositive of the issue of the district court's

jurisdiction to enter an enforcement order, the sole issue in this appeal." (JA 266) The Ninth Circuit stated that, in *Wilkinson*, "we expressly held that the 'district court had jurisdiction to decide the motion[] under its inherent supervisory power.' 922 F.2d at 557. Similarly here, the district court properly assumed jurisdiction to decide Guardian's post-judgment motion." (JA 267) By these statements, the Ninth Circuit clearly adopted the nebulous concept of inherent supervisory jurisdiction as alone conferring power to resolve post-dismissal settlement disputes.

2. The Ninth Circuit's Application of *Wilkinson* in *Kokkonen v. Guardian* Conflicts with Other Circuit Courts of Appeals.

The Ninth Circuit's decision in *Kokkonen v. Guardian* is directly contrary to the decisions reached in other circuits. These circuits hold that if the district court has dismissed the case, the settlement agreement was not incorporated into an order or judgment of the court, the court has not otherwise retained jurisdiction and no independent basis for federal jurisdiction exists, then the district court may, at best, reinstate the case to its active docket list under Rule 60(b)(6). However, the Court may not enforce the settlement agreement because it does not have jurisdiction to do so.

a. The State of the Law in the Court of Appeals for the Fourth Circuit.

The Court of Appeals for the Fourth Circuit ("Fourth Circuit") analyzed this issue in depth in *Fairfax*, in which

the Fourth Circuit held that a district court was not empowered to enforce a post-dismissal settlement agreement "unless the agreement had been approved and incorporated into an order of the court, or, at the time the court is requested to enforce the agreement, there exists some independent ground upon which to base federal jurisdiction." *Fairfax*, 571 F.2d at 1303. The Fourth Circuit clearly held that a district court does not have limitless inherent subject matter jurisdiction to enforce a settlement agreement that terminated litigation before it; rather, the "inherent power" of a district court to enforce settlement agreements *presupposes* the existence of federal jurisdiction over the case or controversy. *Id.* at 1304.

Fairfax involved the same fact situation as the one present before the Ninth Circuit on appeal: the parties had entered into settlement agreements which resolved their federal court action and the court dismissed the action. The dismissal orders did not mention the settlement agreements "and they neither approved nor incorporated either settlement agreement." *Id.* at 1301. After the dismissal of the action, plaintiffs moved the court to enforce the settlement agreements. The Fourth Circuit held that the district court did not have subject matter jurisdiction to enforce the settlement agreement because it had dismissed the action with prejudice, the agreement had not been approved and incorporated into an order of the court, and there was no other independent ground upon which to base federal jurisdiction. *Id.* at 1303.

The Fourth Circuit stressed that district courts are courts of limited jurisdiction, which must have proper jurisdiction before they can hear a case or controversy. *Id.*

Because the case had been dismissed, the settlement agreement was not incorporated into the order of dismissal and no other grounds for federal jurisdiction were shown, the settlement agreement amounted to nothing more than a private contract between the parties. *Id.*[18] Therefore, absent another independent ground for federal jurisdiction, the district court had the authority under Rule 60(b)(6) to vacate the dismissal and return the case to the court's docket, but it did not have jurisdiction to enter an order enforcing the settlement agreement. *Id.* at 1303, 1305-1306.

b. The State of the Law in the Court of Appeals for the Seventh Circuit.

Similarly, the Court of Appeals for the Seventh Circuit ("Seventh Circuit") ruled in *McCall* that a district court does not have jurisdiction over a post-dismissal dispute involving a settlement agreement "merely by virtue of having had jurisdiction over the case that was settled." *McCall*, 777 F.2d at 1185. The *McCall* court held

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[18] According to the *Fairfax* court, because the settlement agreement terminating the litigation of the federal claim was a private contract between the parties, the plaintiff, besides filing a Rule 60(b) motion, also could file a breach of contract claim in state court. *Fairfax*, 571 F.2d at 1305. Because a settlement agreement is nothing more than a contract, had plaintiff filed a new complaint in the district court alleging breach of contract and seeking specific performance, the court would have dismissed the complaint on jurisdictional grounds. *Id.* at 1303. Likewise, if the parties had entered into the agreement without filing the litigation in district court, the federal district court would have been without jurisdiction to enforce the settlement agreement. *Id.*

that there is no "inherent federal jurisdiction" to summarily enforce settlement agreements that settled federal court actions. Rather, an unconditional dismissal of the federal case terminates federal jurisdiction except for the limited purpose of reopening the case and vacating the order of dismissal pursuant to Rule 60(b). *McCall*, 777 F.2d at 1186, 1190. *Accord Warner v. Rossignol*, 513 F.2d 678, 683 (1st Cir. 1975); and *Stipelcovich v. Sand Dollar Marine, Inc.*, 805 F.2d 599, 605 (5th Cir. 1986). Therefore, there must be some form of jurisdiction within the court – such as a deliberate retention of jurisdiction by the court or an independent reason for jurisdiction – if the settlement agreement by which the federal case was dismissed is to be enforceable in federal court. *McCall*, 777 F.2d at 1187-1189. As the Seventh Circuit stated, it would not use "so formless a concept as inherent power to give the federal courts an indefinite jurisdiction over disputes in which the federal interest may be nonexistent." *Id.* at 1187.

As the court stated, a settlement agreement is a private contractual matter between the parties, and, without an express retention of jurisdiction or an independent reason for federal jurisdiction any dispute relating to this agreement is only remediable under a state court action.[19]

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[19] It is well established that settlement agreements which terminate litigation are contracts. *Village of Kaktovic v. Watt*, 689 F.2d 222, 230 (D.C. Cir. 1982) and cases cited there at footnote 62. Thus, any breach of a settlement agreement is a breach of contract, which is governed by state law. *Fairfax*, 571 F.2d at 1303; *United Commercial Ins. Service, Inc. v. Paymaster Corporation*, 962 F.2d 853, 855-856 (9th Cir. 1992); and *Lee v. Hunt*, 631 F.2d 1171, 1174 (5th Cir. 1980).

Id. at 1185-1186. A dispute over a settlement agreement that terminated a federal action does not arise under federal law, even if its ultimate origin is federal. It is simply a dispute over a meaning of a contract, and "such disputes are traditionally, uncontroversially and exclusively within the jurisdiction of state courts." *Id.*

The Seventh Circuit again addressed whether a district court had post-dismissal jurisdiction to enforce a settlement agreement in *United Steelworkers v. Libby, McNeil & Libby*, 895 F.2d 421, 423 (7th Cir. 1990). In *Steelworkers*, the order of the district court dismissing the action with prejudice was signed by the court and stated that the court had approved the settlement entered into by the parties. The order then dismissed the complaint and counterclaim with prejudice. The issue before the court was whether the district court's statement of approval of the settlement agreement constituted a retention of jurisdiction by the court over the settlement agreement.

The court applied its reasoning from *McCall* and stated that "Rule 41(a)(2) of the Federal Rules of Civil Procedure does not confer authority on federal district judges to enforce the terms of settlement agreements that may have motivated the parties to seek voluntary dismissal of the suit." *Steelworkers*, 895 F.2d at 423, quoting *McCall*, 777 F.2d at 1189. It further found that, on the facts before the court:

> [t]here is nothing in the brief order of dismissal entered by the district judge . . . which indicates or provides any inference that he intended to retain jurisdiction over the completion of the parties' agreement. . . . While asking a judge to approve and sign a negotiated settlement agreement may be fairly common and acceptable practice . . . it does not constitute a grant of retained jurisdiction.

Steelworkers, 895 F.2d at 423. Therefore, if the federal court had jurisdiction over the settlement agreement, jurisdiction had to rest on some other grounds, such as a retention of jurisdiction over the agreement by the district court. *Id.* The court held: "to the extent a settlement agreement is incorporated into a court's final judgment or order, the district court retains jurisdiction to interpret that agreement and order its enforcement." *Id.* Because the district court did not retain jurisdiction in its order and the order did not incorporate the settlement agreement within it, the Seventh Circuit found that the court had no jurisdiction to clarify or enforce the agreement. *Id.* at 424.

The facts in this case before this Court are even more compelling to show that the district court did not retain jurisdiction over the settlement agreement: the Stipulation and Order of Dismissal With Prejudice did not even *mention* the settlement agreement, let alone incorporate it by reference or attach it thereto. (JA 89-91) Nor did, or could, the court approve and sign the settlement agreement, as was done by the district court in *Steelworkers*, because the settlement agreement between the parties here is not in writing. (JA 76-88) Thus, the district court in this action was without jurisdiction in hearing the motion to enforce the settlement agreement.

c. The State of the Law in the Court of Appeals for the Sixth Circuit.

The Court of Appeals for the Sixth Circuit ("Sixth Circuit") similarly held in *Hinsdale v. Farmers National Bank & Trust Co.*, 823 F.2d 993 (6th Cir. 1987) that a district court had no jurisdiction to enforce a settlement agreement where the parties had stipulated to a dismissal with prejudice and the court had ordered the unconditional dismissal of the action. *Id.* at 995-996. In *Hinsdale*, the parties signed a stipulation of dismissal with prejudice, even though the formal settlement documents had not yet been drafted or signed. The district court then dismissed the case with prejudice. Later, certain parties filed motions for specific enforcement of the settlement agreement. *Id.* at 994-995. The Sixth Circuit held that the district court had no jurisdiction to enforce a settlement agreement where the parties had stipulated to a dismissal with prejudice and the court had ordered the unconditional dismissal. *Id.* at 995-996. The district court's unconditional dismissal of the action with prejudice, without attempting to retain jurisdiction to enforce the settlement agreement, terminated the court's jurisdiction except for the limited purpose of reopening and setting aside the judgment of dismissal pursuant to Rule 60(b). *Id.*

The Sixth Circuit *specifically declined* to rule that the district court had inherent jurisdiction to enforce the settlement agreement after dismissal of the action. *Id.* at 996. One of the parties had argued that the Sixth Circuit's prior holding in *Aro*, 531 F.2d 1368, suggested that the district court had such inherent jurisdiction to enforce the

settlement agreement. The Sixth Circuit clarified its rulings in *Aro* by stating:

> We held in *Aro Corp.* that, upon breach of a settlement agreement which terminated the litigation pending before it, a district court may *vacate* the prior order of dismissal *pursuant to Rule 60(b)*. 531 F.2d at 1371. We further held that once the proceedings are reopened, the district court has inherent jurisdiction to enforce the settlement agreement. *Id.* We did not, however, hold that a district court has jurisdiction to enforce a settlement agreement *without having vacated the prior unconditional order of dismissal with prejudice* and without having re-opened the proceedings.

Hinsdale, 823 F.2d at 996 (emphasis in original) (footnote omitted).[20]

The decision in *Aro*, a patent infringement action, in and of itself does not truly support the concept of "inherent supervisory jurisdiction" over post-dismissal enforcement actions. The court in *Aro* started its analysis by stating the principle that has long been recognized by the Ninth Circuit and other circuit courts: "courts retain the inherent power to enforce agreements entered into in settlement of litigation *pending before them.*" *Aro*, 531 F.2d at 1371 (emphasis added). The *Aro* court continued, stating that the lower court was correct in vacating its prior

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[20] The court noted in the footnote omitted above that its rule that once the court has reopened the proceedings, the court has jurisdiction to enforce the settlement agreement is at odds with the decisions in *Fairfax* and *McCall*. *Hinsdale*, 823 F.2d at 996.

order of dismissal under Rule 60(b) because one of the parties was attempting to repudiate the settlement agreement. *Id.* at 1371. Its next sentence stated that the court had inherent power, and "when required in the interests of justice, the duty to enforce the agreement which had settled the dispute pending before it." *Id.*

This holding supports two items: it is necessary to first file a Rule 60(b) motion before a court has jurisdiction to enforce a settlement agreement, and, at least in *patent actions*, in which the federal courts have *exclusive jurisdiction*, this is a situation where the "interests of justice" require the federal court to enforce the settlement agreement.[21] Guardian wishes this Court to overlook the fact that even in *Aro*, the court first granted the request for the Rule 60(b) motion, then vacated the order of dismissal and reinstated the case to the court's docket. Therefore, the case was again pending before the court before it was enforced. In this action, Guardian did not, and has not, filed a Rule 60(b) motion for relief from the order of dismissal.

d. The State of the Law in the Court of Appeals for the Third Circuit.

Recently, the Court of Appeals for the Third Circuit ("Third Circuit") addressed this issue directly and

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[21] Moreover, as noted above, *Aro* based its holding that a district court can have inherent supervisory jurisdiction on a state court case, which is completely inapposite because state courts are courts of general jurisdiction. It also based its holding on the policy favoring settlement of litigation. As noted above, this policy does not, and cannot, confer federal jurisdiction.

rejected the concept of inherent supervisory jurisdiction, holding " 'a district court does not have continuing jurisdiction over disputes about its orders merely because it had jurisdiction over the original dispute[.]' " *Sawka*, 989 F.2d at 141, quoting its previous dictum in *Washington Hospital v. White*, 889 F.2d 1294, 1298-99 (3d Cir. 1989). In *Sawka*, as in the previous actions, the district court dismissed the action outright after learning that a settlement agreement had been reached, without incorporating the settlement agreement which terminated the action into an order or judgment of the court and without specifically retaining jurisdiction to enforce the agreement. When faced with this issue present now before the Court, the Third Circuit held that a district court does not have the power to enforce a settlement agreement which is the basis of, but not incorporated into, an order or judgment of the court unless the district court has manifested an intent to retain jurisdiction. *Sawka*, 989 F.2d at 140-141. *See also Halderman*, 901 F.2d at 317 (quoting *McCall*'s language that the court had rejected the notion that federal judges have inherent power to enforce settlement agreements arising out of lawsuits that were once before them, although the district court clearly has power to enforce a post-dismissal motion when it had retained jurisdiction to effectuate the terms of the settlement agreement).

e. The State of the Law in Other Circuit Courts of Appeals.

Not all of the other circuits have addressed this exact issue directly. The Fifth and First Circuit Courts of Appeals have held that after an unconditional dismissal

of a federal action, a party's available remedies for breach of the settlement agreement are: 1) file a breach of contract action, usually in state court, or 2) request the district court to vacate the dismissal pursuant to Rule 60(b) and reinstate the case to the court's docket. *See, e.g., Stipelcovich,* 805 F.2d at 605 (when federal suit had been dismissed, plaintiff's remedies to enforce breach of settlement agreement were to bring a new suit for breach of the agreement or to move pursuant to Rule 60(b)(6) to vacate the dismissal and reinstate the case); *Warner,* 513 F.2d at 683 (same).

The First Circuit, however, has also held in *Mathewson Corp. v. Allied Marine Industries, Inc.,* 827 F.2d 850 (1st Cir. 1987), that: "Without doubt, a district court possesses the authority to insure due compliance with such a pact. *See Dankese v. Defense Logistics Agency,* 693 F.2d 13, 16 (1st Cir. 1982) (district court 'retains an inherent power to supervise and enforce settlement agreements entered into by parties')." *Mathewson,* 827 F.2d at 852. The *Mathewson* court, however, failed to quote the entire passage from *Dankese,* which limited this inherent power to supervise and enforce settlement agreements in *actions pending before the court. See Dankese,* 693 F.2d at 16.

This apparent embrace of the concept of inherent supervisory jurisdiction by the First Circuit in *Mathewson* is repeated in its decision in *Baus,* 834 F.2d 1114, citing *Mathewson* with approval. In *Baus,* although acknowledging that the federal court would have jurisdiction anyway because the United States is a party, the *Baus* court gratuitously noted that if the district court vacated its judgment under Rule 60(b), the court would then have the

inherent power to enforce the settlement agreement, following the holding in *Aro.* Yet the First Circuit in *Baus* was unable to cite anything more than the "policy favoring settlement of disputes and the avoidance of costly and time-consuming litigation" as grounds for expanding federal subject matter jurisdiction to include the inherent jurisdiction to enforce settlement agreements. *Baus,* 834 F.2d at 1127.

The Fifth Circuit, too, has conflicting opinions on the issue of inherent power of district courts to enforce settlement agreements. *Compare Stipelcovich,* 805 F.2d 599, with *Lee v. Hunt,* 631 F.2d 1171, 1174 (5th Cir. 1980) ("federal courts possess the inherent power to enforce agreements entered into in settlement of litigation"), which relied on cases which involve a court's inherent jurisdiction to enforce settlement agreements in actions pending before the court. *See also In Re Corrugated Container Antitrust Litigation,* 752 F.2d 137, 141-142 (5th Cir. 1985) (Fifth Circuit did not reach the issue of whether the district court has inherent power to enforce settlement agreements or whether a court's approval of a settlement agreement implied that the court has returned jurisdiction because the court had expressly retained jurisdiction to enforce the settlement agreement in this action).

The Eighth Circuit has directly held that district courts do not have inherent authority to enforce settlements and a district court lacks jurisdiction to enforce a post-dismissal settlement agreement when the district court did not incorporate the agreement into the dismissal order or otherwise retain jurisdiction to enforce the settlement. *Adduono v. World Hockey Ass'n,* 824 F.2d 617, 622 (8th Cir. 1987). Similarly, the Court of Appeals

for the District of Columbia in *Village of Kaktovik v. Watt*, 689 F.2d 222, 232, n.76 (D.C. Cir. 1982) cited *Fairfax* and stated that there is no jurisdiction to enforce a settlement agreement not made part of the dismissal order.

The Circuit Court of Appeals for the Tenth Circuit has not directly addressed this issue, although it did hold in *Smith*, 881 F.2d at 905, that it agreed with the Seventh Circuit in *McCall* in holding that "[a]n unconditional dismissal terminates federal jurisdiction except for the limited purpose of reopening and setting aside the judgment of dismissal" under Rule 60(b). *Smith*, 881 F.2d at 904.

The Eleventh Circuit, at first blush, appears split. In *Londono v. City of Gainesville*, 768 F.2d 1223, 1227 (11th Cir. 1985), the Eleventh Circuit held: "Absent an independent jurisdictional base, the court had no authority *sua sponte* to transform Londono's section 1983 claim into a suit seeking the declaration of a contract of settlement and the specific performance thereof." In *Kent v. Baker*, 815 F.2d 1395 (11th Cir. 1987), the court noted that a conflict in the Eleventh Circuit may exist on this issue. *Kent*, 815 F.2d at 1397. The *Kent* court held that in actions which were still pending before the court and had not been dismissed, the court had jurisdiction to enforce the settlement agreement. *Id.* The court then turned to the *Londono* action, which it declined to follow if the decision in *Londono* held that district courts did not have jurisdiction to enforce a settlement agreement prior to the dismissal of the action. *Kent*, 815 F.2d at 1399-1400. Regardless of whether some split may exist, in each case, the Eleventh Circuit has not adopted the concept of inherent supervisory jurisdiction.

f. The Cases Which Promote the Concept of Inherent Supervisory Jurisdiction are Almost All Patent Actions, Which is an Area of Exclusive Federal Jurisdiction.

Interestingly, *Aro* and the few other cases which promote the concept of inherent supervisory jurisdiction involve patents, patent infringement actions and antitrust actions, i.e., actions in which the federal courts have a special interest in protecting their exclusive federal jurisdiction and in which the courts may arguably be said to have retained jurisdiction. *See Kelly v. Greer*, 365 F.2d 669 (3d Cir. 1966), *cert. denied*, 385 U.S. 1033, 87 S. Ct. 772, 17 L. Ed. 2d 692 (1967) (a procedurally complicated patent action in which the court ended up enforcing a settlement agreement of an action that was *pending before it*, after having vacated its prior order of dismissal and restored the case to its active docket list). *See also Sidewinder Marine, Inc. v. Nescher*, 440 F. Supp. 680 (N.D. Cal. 1976) (a patent infringement action in which the court had jurisdiction to enforce a settlement agreement between the parties by entering a permanent injunction dealing with the issue of the settlement agreement; the court, nevertheless, stressed the importance that in *patent actions*, for which the federal courts have *exclusive* jurisdiction, the parties should not be able to divest the federal courts of their exclusive jurisdiction by entering into a settlement agreement, the federal courts should remain available to parties to enforce a patent action settlement agreement); *Joy*, 810 F.2d 1127 (a patent infringement action); and *In Re Corrugated*, 752 F.2d 137 (a class action antitrust litigation suit which was resolved by a consent decree).

D. The Court Should Adopt a Rule Which Requires Entry of a Formal Order Retaining Jurisdiction to Enforce its Terms as a Predicate for the Exercise of Jurisdiction Over Post-Dismissal Settlement Enforcement.

Petitioner submits that a "bright line" rule is necessary to ensure that the district court's jurisdiction is exercised in accord with the limited jurisdiction conferred on it by Article III and to provide certainty to litigants concerning the consequences of their contractual settlement of pending federal litigation.

Petitioner contends a practical, objective decisional rule would provide that when a lawsuit is concluded by dismissal under F.R.C.P. Rule 41(a), the parties not be subject to continuing jurisdiction and oversight by the court except and unless the formal stipulation or order that disposes of the action expressly retains jurisdiction to further enforce its terms. Only by requiring the explicit retention of jurisdiction as a part of the court order will the requirements of the Constitution and the important policy prerogatives of the litigants and federalism be well served.

Guardian's argument in the court below turns on imprecise and subjective standards and ignores the plain fact that this is a contractual settlement and not a judicial consent decree. Its suggestion of factors influencing the determination whether to assume jursidiction of an enforcement matter is unworkable because they are based on extraneous and amorphous factors not in the control of the parties who are themselves contracting to settle.

For example, such subjective factors as whether a settlement is memorialized in a record transcript, whether the settlement was reached before or after commencement of trial, and whether and to what extent the judge participated in settlement negotiations should not matter, and would only result in uncertainty and undermining the prerogatives of the parties themselves to contractually settle their dispute.

E. The Inherent Power Concept of Federal Jurisdiction is Incompatible With Important Federal and State Interests.

Aside from its constitutional implications, discussed *supra*, the inherent power doctrine in its untenably broad concept of federal jurisdiction intrudes upon a number of important federal and state interests.

1. Finality of Litigation and Litigant Choice.

One has only to read the potpourri of inherent jurisdiction cases spawned in the circuit courts of appeals over the past decade to be struck by the inconsistent results and rationales that collectively play havoc with the expectations and choices of litigants electing to settle their disputes. In this case, the parties reached a settlement agreement. The lawsuit was dismissed by stipulated order and neither the order nor the court imposed any binding terms upon the parties.[22] Yet by judicial fiat, the

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[22] As noted above, the court could not impose any terms upon the parties, because the stipulated dismissal was done pursuant to F.R.C.P. Rule 41(a)(1)(ii), not Rule 41(a)(2).

parties' settlement agreement is in effect turned into a consent decree subject to the continuing and perpetual jurisdiction of the federal court. This frustrates the expectations of the parties, at least Kokkonen's, that the settlement was concluding this litigation upon terms certain.

2. Inherent Jurisdiction to Enforce Settlements is Unnecessary and Would Conflict With The Existing Rules and Statutes.

The problem of enforcing settlements is neither new nor novel and an existing procedural context for addressing that problem has evolved. The need for an alternative means of redress in the event of a breach of a settlement agreement, particularly one that creates and expands upon federal jurisdiction, is unclear and may interfere with the operation of the existing system. *See* Note, *Post-Dismissal Enforcement of Settlement Agreements in Federal Court and the Problem of Subject Matter Jurisdiction*, 9 Rev. Litig. 249, 259 (1990). First, F.R.C.P. Rule 41(a)(2) permits conditional dismissals to retain jurisdiction. *Id.* Second, F.R.C.P. Rule 60(b) is available to vacate the dismissal or judgment and reinstate a case on the court's docket, thus restoring federal jurisdiction. There is general consensus that breach of a settlement agreement may constitute the hardship or injustice necessary to constitute cause to grant a Rule 60(b)(6) motion. *See, e.g., Baus*, 834 F.2d at 1124. Finally, the non-breaching party may file an action for breach of contract seeking damages and/or specific performance in state court and, if diversity requirements are met, in federal court. Inherent jurisdiction threatens to alter this balance and coordination of the existing enforcement mechanisms.

3. Endorsement and Enlargement of Federal District Courts' Role as Settlement Monitors Would Adversely Impact Already Taxed Court Resources.

Federal courts presently have assumed and are exercising a substantial role in the monitoring and oversight of settlements, usually in the form of consent decrees or class settlements in areas having important federal interests, including but not limited to antitrust, civil rights, environmental quality, securities and market fraud, and patent cases. Substantial judicial resources are committed and expended on such monitoring responsibility, a circumstance justified by the substantial federal interest and congressional commitment present in many of these subject areas. But we should consider carefully expanding that role to in effect make district courts' monitoring of private settlements available on a large scale. Petitioner submits that endorsing district courts' inherent jurisdiction to enforce settlement agreements would do just that.

The case before the Court provides an instructive example of the resource allocation problem presented by the jurisdictional free-for-all invited by inherent jurisdiction. The parties negotiated a private confidential settlement (so private in fact that the parties made it oral and never reduced it to writing to help ensure its confidentiality). The settlement terms constrain certain commercial communications and practices between the parties extending indefinitely (at least for decades) into the future. The parties could come before the district court repeatedly in their efforts to enforce the settlement, and could be coming before the court for years after the action had terminated. Further, any enforcement action would

involve exclusively the interpretation and enforcement of state law.

In addition to enforcement issues, courts may, under an inherent jurisdiction rubric, be called upon to deal with a panoply of other issues relating to settlements, such as modification and rescission. In this case, for example, the California legislature recently adopted new provisions in the State's insurance regulations which significantly affect one of the terms of Kokkonen's and Guardian's settlement agreement. California Code of Regulations, Title 10, Chap. 5, Subchap. 7.5, "Unfair Claims Settlement Practices Regulations" mandates that insurance agents transmit certain notices of claim directly to the insurance company issuing the policy. This new regulation *requires* Kokkonen to contact Guardian on behalf of his Guardian policyholder clients, which Guardian expressly contends Kokkonen cannot do under the terms of the settlement agreement. A court will need to address this issue and others during the life of the settlement agreement, all at a further expenditure of federal judicial energy.

Thus, through the vehicle of inherent jurisdiction, and by virtue of having been able to remove the original state court action to federal court, the parties have standby access to the federal court to sort out their differences for the life of their settlement without any need to ever establish an independent basis for jurisdiction. This supervision, while not likely to require as intensive a commitment of judicial resources as, for example, do institutional reform/public interest consent decrees, still

has costs associated with it.[23] The fact that the district courts would be applying state law and in many cases conducting plenary hearings may still further add to costs in time, staff and money.[24]

4. Inherent Jurisdiction Would Serve as Disincentive To Parties to Private Contractual Settlements Addressing the Issue of Dispute Resolution in Their Agreement.

The availability of a broad, catch-all standing jurisdiction to enforce settlement agreements without any

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[23] Petitioner submits his case is not atypical of other diversity cases in federal court. In the year ending June 30, 1993, there were 228,652 total civil cases filed in the district courts. Correcting to eliminate prisoner petitions and cases in which the United States is a party, there were 50,809 diversity cases, representing 35.94% of the total private civil cases. Reliable settlement statistics are notoriously elusive, but assuming just half of these cases settle, inherent jurisdiction could translate into the oversight and enforcement of a large number of cases where no substantial federal question or national interest is present. Administrative Office of United States Courts, "The Federal Judicial Workload Statistics", Table C-2, pp. 14-15 (1993).

[24] Expanding the notion of federal court jurisdiction to include the concept of "inherent jurisdiction" would not promote judicial economy or efficiency. When there is a question as to the interpretation of the terms of a settlement agreement, the court is not to summarily enforce the terms of the settlement agreement, choosing one party's interpretation over the other party's interpretation. Rather, the court is to hold an evidentiary hearing to determine what the true terms of the settlement agreement are, and then enforce those terms. *See Autera v. Robinson*, 136 U.S. App. D.C. 216, 419 F.2d 1197, 1200 (1969); *Kukla v. National Distillers Products Co.*, 483 F.2d 619, 621-622 (6th Cir. 1973).

need to establish stringent eligibility for federal jurisdiction may act as a disincentive to parties to provide for dispute resolution in their settlement agreement itself. As discussed above, the uncertainty of when and if their settlement might be subject to further scrutiny by the federal court and the resulting lack of finality may dissuade litigants and their counsel from planning for disputes by agreeing on a method of dispute resolution as an integral part of their settlement.

5. The Exercise of Inherent Jurisdiction to Enforce Settlements Invites Unnecessary Federal-State Conflict.

The application of inherent jurisdiction, in suspending the traditional stringent jurisdictional bases that are at the heart of and define the limited jurisdiction of federal courts, is at odds with state court general jurisdiction, in at least three respects: 1) in allocating and diverting cases that previously would have been the province of state courts; 2) since in diversity cases the enforceability and interpretation of settlement agreements is governed by state law, in intruding an unnecessary federal presence upon the state's interest in the application by the state of its own laws; and 3) in subjecting states themselves as litigants to the vicissitudes, uncertainty, and expense of unplanned and possibly unwelcome federal court oversight of settlements which the state has entered into to settle litigation.

6. Inherent Jurisdiction Threatens to Interfere With the Allocation of Judicial Caseload.

The exercise of inherent jurisdiction, by avoiding the limitations of traditional federal jurisdiction, may also

result in the disruption of the customary allocation and division of cases between federal and state courts (to say nothing of inviting forum shopping). For example, in this case, the effect of the exercise of inherent jurisdiction is to allow Guardian the benefits of federal diversity jurisdiction without having to satisfy the amount in controversy requirement. 28 U.S.C. § 1332. Absent diversity, state courts are the proper forum for claims relating to breach of settlement agreements. Inherent jurisdiction thus threatens to disturb the allocation of cases and could result in overloading the federal judiciary with matters that otherwise would have had to be brought in state court.

7. The Exercise of Inherent Jurisdiction Undermines the Policy of Settling Litigation by Agreement Between Parties.

The prospect of having their settlement subjected to continuing jurisdiction and oversight by a federal judicial monitor actually may serve to deter parties from attempts to resolve their own problems or to make use of alternative dispute resolution techniques. This, coupled with the wild-card nature of inherent jurisdiction and its impact on the pursuit of finality and predictability, discussed *supra*, threatens to thwart the policy of encouraging agreed resolution of disputes.

A "bright line" rule such as that proposed above in Section D would not only serve the limited jurisdiction of federal courts under Article III and the policy of judicial restraint, but also would permit the parties and the court

to reliably determine when federal court jurisdiction concludes and would avoid surprise invocation of federal jurisdiction. Such a rule would thus obviate the foregoing deleterious impacts on federal and state interests.

XI.

CONCLUSION

For the foregoing reasons, as well as those set forth in the States' amici curiae brief, the Court should hold that after dismissal of actions pending before them, district courts are without jurisdiction to enforce settlement agreements absent a formal order expressly retaining jurisdiction and making its terms subject to further enforcement. The Court should reverse the decision of the Court of Appeals for the Ninth Circuit and remand with direction that the order of the district court be vacated and set aside as having been entered in excess of its jurisdiction.

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Respectfully submitted,

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